

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Group: 3

Program: Other agency

Question No. AE15/016

Senator Collins asked the following question at the hearing on 24 February 2015:

Senator JACINTA COLLINS: The third example I wanted to ask about was in this evening's media. I have read a report on the Omarjan Azari case.

Mr Colvin: Yes, this is a matter that was back in court today, I think, in Sydney.

Senator JACINTA COLLINS: Are you aware of that report?

Mr Colvin: I am not aware of the media reports but I am aware that the matter was back at court.

Senator JACINTA COLLINS: I apologise for not having a copy of this available. It is just this evening's report. I will try to give you an opportunity to easily absorb the gist of what I am referring to. His barrister, Steve Boland, said comments by the Prime Minister, Tony Abbott, in the days and weeks after the counter-terrorism raids, were, as reported in The Sydney Morning Herald this afternoon, 'unprecedented interference in the criminal-justice process'. He went on to say, 'The people of Australia have been told there is a plot to behead somebody randomly. It is made up, your honour.'

Mr Colvin: I have not seen the report. If it is reported that this is what his barrister has said, I am in no position to say he has or has not.

CHAIR: This is a current court case.

Mr Colvin: It is a current court case, yes.

Senator JACINTA COLLINS: I am not asking for comment on the case. I am asking questions in relation to information management around national-security matters. The assertion, in this case, was there was an unprecedented interference in the criminal-justice process. I assume from that—as I said, I have only picked this up this evening—that this is was another example of at least some people asserting that more information has been released into the public realm that could prejudice proceedings.

Senator Payne: Chair, I do have concerns about discussing this in the public theatre of estimates as a matter currently before the courts.

Senator JACINTA COLLINS: What I might do in this one, because it is only just currently being reported, as I said, is to give Mr Colvin an opportunity to reflect on what has been reported. He has responded to such concerns in relation to the earlier case that I indicated, which is why I have raised this one as at least a further report of concerns by some that the amount of information on national security matters is potentially compromising future proceedings. Are you happy to take that on notice?

Mr Colvin: I am happy to take it on notice, and I will certainly be very careful about what we say about an ongoing matter. But as a general principle, it is not unusual or uncommon for material to be placed onto the public record, and I have no doubt that people form a view as to whether that is too much or too little. I will not comment on how the persons charged defence team wishes to conduct their defence; that is a matter for them. I will take my advice from our experience, and I also note the comments of the Commonwealth DPP in relation to what the Prime Minister said in parliament on 12 February.

Senator JACINTA COLLINS: The reason I raise this one—I think, again, I have not given you a copy of this precise report—and you will take this on notice, was the quote—the assertion—that

it is an unprecedented interference in the criminal justice process; that being comments made by the Prime Minister.

Mr Colvin: As I said, that is a comment and an opinion by the defence team for the accused, and I am not going to make a comment on whether that is appropriate, right or not right.

Senator JACINTA COLLINS: Again: I ask because you have reflected on comments made by others in relation to that earlier case, so I am giving you the same opportunity.

Mr Colvin: As I said, in relation to 12 February, we gave explicit approval for the Prime Minister's statement in parliament on that day. I am not aware of what comments are actually in question here; the specificity is important. It is a matter before the court at the moment—literally before the court today—so I am going to be quite guarded and limited in what I will say.

Senator JACINTA COLLINS: Which is why I am suggesting you take on notice—

Mr Colvin: I am happy to take it on notice.

Senator JACINTA COLLINS: what process occurred in relation to what information was released on this particular occasion.

Mr Colvin: Absolutely.

The answer to the honourable senator's question is as follows:

Members of the AFP Executive briefed the Prime Minister and other members of Government on 12 February 2015 regarding Operation Castrum, which resulted in the arrests in Sydney of Mohammed Kiad and Omar Al-Kutobi.

Throughout the course of its counter-terrorism investigations, the AFP routinely provides briefings to both the Minister for Justice and the Attorney-General. These briefings provide detail regarding significant operational activity and outcomes arising from them. Any information is provided so as not to prejudice the conduct of any criminal investigation on the basis that the information provided to the Prime Minister would be part of the brief provided to the court on 12 February 2015, and would form part of the public record.

As Commissioner Colvin stated at the Senate Estimates Hearing, the AFP gave approval for the Prime Minister's statement in Parliament on 12 February 2015.

The Prime Minister and Attorney-General may use their discretion regarding what information they make public, but the statements made by the Prime Minister and the Attorney-General did not go beyond what was approved by the AFP during the briefing held on 12 February 2015.